



20.2120

35

Date December 21, 2020

RESOLUTION APROOVING FIRST AMENDMENT TO URBAN RENEWAL DEVELOPMENT AGREEMENT WITH DES MOINES GRIFFIN BUILDING, LLC (TIM RYPMA ET AL), AND CONSENTING TO ASSIGNMENT OF SAID AGREEMENT TO FREEDOM FINANCIAL BANK, FOR DEVELOPMENT OF GRIFFIN BUILDING AT 319 7TH STREET

WHEREAS, on July 9, 2018, by Roll Call No. 18-1159, the City Council received Communication No. 18-352 setting forth a developer-initiated proposal and preliminary terms of agreement with Des Moines Griffin Building, LLC (Tim Rypma, Jeremy Cortright, Paul Cownie, Development Members; Ron Daniels, Abe Wolf, Lead Investors)(“Developer”) for restoration and redevelopment of the Griffin Building, located at 319 7th Street in downtown Des Moines, with approximately 35 residential apartment units in the upper four floors and approximately 17,800 square feet of commercial space, including ground floor commercial uses and second floor office or retail uses (“Project”), which proposal has been awarded federal and State historic tax credits and State workforce housing tax credits, and directed the City Manager to proceed with negotiation of a development agreement with the Developer; and

WHEREAS, on September 10, 2018, by Roll Call No. 18-1544, the City Council approved an Urban Renewal Development Agreement (the “Development Agreement”) with the Developer, whereby the Developer agreed to construct the Project, at an initial total estimated project cost of \$12,400,000.00, in exchange for economic development assistance provided by the City, and further approved the Conceptual Development Plan for design of the Project; and

WHEREAS, the City Council has further approved in relation to the Development Agreement: an amendment to the Conceptual Development Plan; issuance of Certificate of Completion for Developer’s construction of the Project Improvements; and subordination of the Development Agreement to Developer’s senior lender, Luana Savings Bank; and

WHEREAS, the Developer has requested that the Development Agreement be amended to incorporate a Minimum Assessment Agreement as Exhibit “D” thereto, which Agreement establishes a minimum assessment of \$3,000,000.00 for the commercial portion of the Property, with no changes to the city’s economic development assistance or other terms as set forth in the Agreement, which First Amendment to the Agreement and Exhibit “D”, Minimum Assessment Agreement, are on file and available for inspection in the office of the City Clerk; and

WHEREAS, the Developer has additionally requested that the City consent to an assignment of the Agreement by which the economic development assistance provided by the City will be assigned to Developer’s lender, Freedom Financial Bank, with Developer retaining all obligations for both portions of the Property set forth in the Development Agreement, pursuant to Assignment of Urban Renewal Development Agreement, in substantially the form on file and available for inspection in the office of the City Clerk.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that:

1. The First Amendment to the Urban Renewal Agreement and Exhibit “D” thereto, the Minimum Assessment Agreement, are hereby approved, subject to approval of the Minimum Assessment Agreement



Roll Call Number

20-2120

Agenda Item Number

35

Date December 21, 2020

by the Polk County Assessor, and the Mayor is authorized and directed to execute said documents on behalf of the City of Des Moines and the City Clerk to attest to his signature.

2. The City hereby consents to the Assignment of Urban Renewal Development Agreement by and between the Des Moines Griffin Building, LLC, Freedom Financial Bank, and the City, assigning the economic development assistance for the Project to Freedom Financial Bank, and the Mayor is authorized and directed to execute said document on behalf of the City of Des Moines and the City Clerk to attest to his signature.
3. The Development Services Department Director and her designee(s) are authorized and directed to monitor compliance by the Developer with the Development Agreement as amended and the Assignment, and to submit the Minimum Assessment Agreement to the Polk County Assessor; the City Manager is authorized and directed to execute any additional minor amendments to the Development Agreement and to return any substantive amendments to said Agreement to the City Council for consideration and approval; and the Finance Department is hereby authorized to direct payment on the economic development assistance owed in accordance with the Assignment, following request by the Office of Economic Development.

(Council Comm. No. 20-566)

MOVED BY Boesen to adopt.

FORM APPROVED:

/s/ Glenna K. Frank
Glenna K. Frank, Assistant City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE	✓			
BOESEN	✓			
GATTO	✓			
GRAY	✓			
MANDELBAUM	✓			
VOSS	✓			
WESTERGAARD	✓			
TOTAL	7			

MOTION CARRIED

APPROVED

J. M. Franklin Cownie Mayor

CERTIFICATE

I, P. KAY CMELIK, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

P. Kay Cmelik

City Clerk

ASSIGNMENT OF URBAN RENEWAL DEVELOPMENT AGREEMENT

This ASSIGNMENT OF URBAN RENEWAL DEVELOPMENT AGREEMENT (“**Assignment**”) is made and entered into as of the 21st day of Dec, 2020 by and among DES MOINES GRIFFIN BUILDING, LLC (“**Borrower**”), FREEDOM FINANCIAL BANK (“**Lender**”), and THE CITY OF DES MOINES, IOWA (the “**City**”).

RECITALS:

A. Borrower entered into an Urban Renewal Development Agreement dated September 10, 2018 (“**Development Agreement**”) with the City.

B. Pursuant to the Development Agreement, Borrower agreed to develop the Property, as defined in the Development Agreement, “by adaptive reuse and historical restoration of the underutilized building on the Property for restaurant, office common area, or similar commercial uses on the ground floor and additional office or retail space on the second floor and residential uses on the upper floors”. (Agreement, pg. 2). In consideration of Borrower’s development of the Property, City agreed to provide Borrower with certain economic incentives that will be funded in part with the Development Grant and Project TIF, both as defined in the Development Agreement (collectively with all economic incentives listed in the Development Agreement, referred to as the “**Economic Incentives**”), as such Economic Incentives provided to Borrower pursuant to the Development Agreement further the objectives of the City’s Urban Renewal Plan, as defined and more fully described in the Development Agreement.

C. Borrower will execute a promissory note in favor of Lender (as the same may be amended, restated, replaced, supplemented, or otherwise modified from time to time, collectively the “**Note**”) pursuant to which Borrower will be indebted to Lender in the principal sum of \$8,160,000.00 (collectively, the “**Loan**”) advanced pursuant to a Business Loan Agreement to be executed between Borrower and Lender (as the same may be amended, restated, replaced, supplemented, or otherwise modified from time to time, collectively the “**Loan Agreement**”).

D. The Loan will secured by, among other things, a Mortgage, Assignment of Rents, Security Agreement, and various Guaranties, all as defined in the Loan Agreement (as the same may be amended, restated, replaced, supplemented, or otherwise modified from time to time, collectively, the “**Security Instruments**”), which will grant Lender a first priority lien on the properties encumbered thereby. The Note, Loan Agreement, the Security Instruments, this Assignment, and any of the other Loan Documents (as defined in the Loan Agreement) evidencing or securing the Loan or executed or delivered in connection therewith are collectively referred to as the “**Loan Documents**”.

E. Pursuant to the Development Agreement, Borrower converted the Property to a Horizontal Property Regime pursuant to Iowa Code Chapter 499B, as evidenced by the Declaration of Horizontal Property Regime filed December 26, 2019 in Book 17641, Page 572 of the Polk County, Iowa records (the “**Condo Regime**”), which Condo Regime created the Commercial Unit

and the Residential Unit as defined in the Condo Regime.

F. As consideration for Lender making the Loan to Borrower pursuant to the Loan Documents, Borrower agrees to conditionally assign in favor of Lender all of its right, title, and interest in the economic incentives under the Development Agreement, including without limitation the Development Grant as defined in Section 4.2 of the Development Agreement (the “**Incentive Payments**”).

NOW, THEREFORE, the parties, intending to be legally bound and to reflect the assignment of the Development Agreement to Lender, agree as follows:

1. Assignment. Borrower hereby conditionally assigns, transfers, and conveys to Lender all of its right, title and interest in and to the Incentive Payments, together with any and all supporting instruments, documents and agreements related to the Incentive Payments. Lender acknowledges that this Assignment is subject to the terms and conditions of the Development Agreement. Nothing contained in this Assignment shall constitute a release of Developer under the Development Agreement.

2. Payment of Indebtedness. This Assignment is intended for collateral purposes only. At such time as the Loan is fully and finally paid, Lender shall release this Assignment.

3. Modifications of Development Agreement. Borrower agrees that it shall not modify or terminate the Development Agreement without the prior written consent of Lender, which consent shall not be unreasonably withheld, conditioned or delayed.

4. Attorney-in-Fact. Upon the occurrence of a default or event of default under the Loan Documents (a “Default”), without affecting any of Lender’s rights or remedies against Borrower under any other instrument, Borrower shall be deemed to have irrevocably appointed Lender as Borrower’s attorney-in-fact with respect to matters concerning solely the Incentive Payments to exercise any or all of Assignor’s rights in, to and under the Development Agreement and to give appropriate receipts, releases and satisfactions on behalf of Borrower in connection with the performance by any party to the Development Agreement and to do any or all other acts in Borrower’s name or in Lender’s own name that Borrower could do under the Development Agreement with the same force and effect as if this Assignment had not been made. The City shall make any Incentive Payments due under the Development Agreement attributable to the Commercial Unit (as defined in the Condo Regime), if any, directly to Lender. In addition, Lender shall have the right to exercise and enforce any and all rights and remedies available after a default to a secured party under the Uniform Commercial Code as adopted in the State of Iowa. If notice to Assignor of any intended disposition of collateral or of any intended action as required by law in any particular instance, such notice shall be deemed commercially reasonable if given in writing at least ten (10) days prior to the intended disposition or other action. Borrower hereby authorizes Lender to deliver a copy of this Assignment to any other party to the Development Agreement to verify the rights granted to Lender hereunder.

5. Lender's Duties. The powers conferred on Lender hereunder are solely to protect its interest in the Incentive Payments. Lender shall have no duty as to Development Agreement or as to the taking of any steps to preserve rights against any parties or any other rights pertaining to the Development Agreement.

6. Further Assurances. Borrower agrees that at any time and from time to time, at its sole expense, it will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that Lender may reasonably request, in order to perfect and protect the Assignment granted or to enable Lender to exercise and enforce its rights and remedies.

7. City Consent. The City hereby consents and agrees to the terms and conditions of this Assignment, agrees that the Mortgage is a Permitted Transfer under Section 1.5 of the Development Agreement and a permitted encumbrance under Section 1.6B of the Development Agreement. The City further represents and warrants to Lender that the Development Agreement is a valid agreement enforceable in accordance with its terms, that the City is not in default under the Development Agreement and that all of the City's covenants, conditions and agreements have been performed as required therein, except those not to be performed until after the date thereof. To the best knowledge of the City, (a) Assignor is not in default under the Development Agreement and (b) all of Assignor's covenants, conditions and agreements have been performed as required therein.

8. City Notice. The City agrees to provide notice as required by the Development Agreement, and that Lender shall have the right, but not the obligation, to cure such default within the time period set forth in the Development Agreement.

9. Notices. Contemporaneously upon execution of this Assignment, Borrower agrees to deliver to the City notice under Section 6.5 of the Development Agreement that copies of all notices, consents, approvals and requests required or permitted under the Development Agreement to be directed to Borrower shall be given to Lender.

10. Lender's Agent. Lender may at any time upon giving written notice to Borrower appoint an agent who may exercise any or all of Lender's rights, powers or duties hereunder as fully as if it were the assignee. Lender may at any time without prior notice revoke the authority of such agent to act on its behalf under this Assignment by giving written notice to Borrower of such revocation. Borrower shall promptly execute all documents and take all action requested by Lender to fully accomplish its rights under this Section.

11. Payment Obligation Absolute. Nothing contained herein shall detract from or limit the absolute obligation of Borrower under the Loan regardless of whether the proceeds derived from this Assignment are sufficient to pay the same.

12. Governing Law and Binding Effect. This Assignment shall be governed by and construed in accordance with the laws of the State of Iowa, and shall inure to the benefit of and be

binding upon the parties hereto, their successor and assigns.

13. Term. This Assignment shall remain in full force and effect until final payment in full of the Loan by Borrower.

14. Assignment by Lender. Lender may assign or otherwise transfer its rights hereunder to any assignee and such assignee shall thereupon become vested with all the benefits in respect thereof granted to Lender herein or otherwise.

15. Severability. Any provision of this Assignment which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

16. Counterparts; Facsimiles. This Assignment may be executed in one or more identical counterparts, which, when executed by all parties, shall constitute one and the same document. The parties hereto may accept this Assignment by sending an executed copy of the signature page by facsimile to the other parties and by forwarding on the same date to the other parties the originally executed signature page for next day delivery.

17. No Waiver; Cumulative Remedies. Each right, power, and remedy herein specifically granted to Lender or otherwise available to it pursuant to any provision hereof shall be cumulative, and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or otherwise; and each right, power and remedy, whether specifically granted herein or otherwise existing, may be exercised, at any time and from time to time as often and in such order as may be deemed expedient by Lender in its complete discretion; and the exercise or commencement of exercise of any right, power or remedy shall not be construed as a waiver of the right to exercise, at the same time or thereafter, the same or any other right, power or remedy. No delay or omission by Lender in exercising any such right or power, or in pursuing any such remedy, shall impair any such right, power or remedy or be construed to be a waiver of any default on the part of City or Borrower or an acquiescence therein. No waiver by Lender of any breach or default of or by City or Borrower hereunder shall be deemed to be a waiver of any other similar, previous or subsequent breach or default.

[Remainder of page intentionally left blank. Signature page to follow.]

IN WITNESS WHEREOF, this Assignment is made as of the day and year first above written.

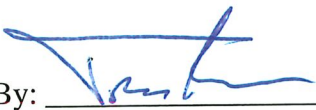
BORROWER:

DES MOINES GRIFFIN BUILDING, LLC,
an Iowa limited liability company

By: 
Name: Abe M. Wolf
Title: Manager

LENDER:

FREEDOM FINANCIAL BANK

By: 
Name: Travis W. Nicholson
Title: Vice President

Consented to by the City of Des Moines pursuant to the authority of Roll Call No. 20-2120, approved on December 21, 2020:

CITY OF DES MOINES, IOWA

ATTEST:

By: *P. Kay Cmelik*
P. Kay Cmelik, City Clerk

By: *T.M. Franklin Cownie*
T.M. Franklin Cownie, Mayor

APPROVED AS TO FORM:

/s/ Glenna K. Frank
Glenna K. Frank
Assistant City Attorney

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this 21st day of December, 2020, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared T.M. FRANKLIN COWNIE and P. KAY CMELIK, to me personally known, and who, being by me duly sworn did state that they are the Mayor and City Clerk, respectively, of City of Des Moines, Iowa, a municipal corporation; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; that the instrument was signed on behalf of City of Des Moines, Iowa, by authority of its City Council, as contained in the Resolution adopted by City Council under Roll Call No. 20- 2120 of City Council on the 21st day of December 2020, and that T.M. FRANKLIN COWNIE and P. KAY CMELIK acknowledged the execution of the instrument to be the voluntary act and deed of City of Des Moines, Iowa, by it and by them voluntarily executed.

Sandi L. Deery
Notary Public in the State of Iowa



**FIRST AMENDMENT TO URBAN RENEWAL DEVELOPMENT AGREEMENT BY
AND BETWEEN CITY OF DES MOINES, IOWA AND DES MOINES GRIFFIN
BUILDING, LLC (METRO CENTER URBAN RENEWAL PROJECT)**

THIS FIRST AMENDMENT to Urban Renewal Development Agreement by and between City of Des Moines, Iowa and Des Moines Griffin Building, LLC (Metro Center Urban Renewal Project) (hereinafter "First Amendment") is entered into this 12th day of January, 2020, by and between the City of Des Moines, Iowa ("City") and Des Moines Griffin Building, LLC ("Developer").

It is agreed by and between City and the Developer that:

1. The above-referenced Urban Renewal Development Agreement (herein referred to as "Agreement"), as authorized by the Des Moines City Council on September 10, 2018, by Roll Call No. 18-1544 and recorded in Book 17139, Page 970 in the office of the Polk County Recorder, is hereby amended in accordance with the terms set forth in this First Amendment.

2. The description of "Exhibits" on the cover page is hereby revised to add the following:

"D" – Minimum Assessment Agreement (Recorded separately)

3. The "Recording Note" on the cover page is hereby deleted in its entirety and replaced with the following:

RECORDING NOTE: Only Exhibit "A" is intended to be recorded with this Agreement. Exhibits "C" and "D" will be recorded separately. This Agreement and all the exhibits will be on file and available for public viewing in the office of the City Clerk.

4. Section 3.5, "Minimum Assessment Agreement", is hereby added to the Agreement in form as follows:

Sec. 3.5. Minimum Assessment Agreement. Prior to commencement of Economic Development Assistance as set forth in Article 4, Developer shall execute a Minimum Assessment Agreement in the form attached hereto as Exhibit "D" and shall provide an original copy of said executed Agreement to the City for filing in the office of the Polk County Recorder.

5. Section 4.2, "Economic Development Grant", subsection (B), other than footnote (7) thereto which remains as originally stated, is hereby deleted in its entirety and replaced with the following:

B. For the purpose of calculating the semi-annual installments on the Economic Development Grant, the "Project TIF" means the amount of taxes collected by the Polk County Treasurer in the then-current fiscal year which are attributable to the property tax levies subject to allocation into the special fund pursuant to I.C. Sec. 403.19(2) as amended from time to time. Accordingly, the Project TIF shall be calculated

as the taxes paid by Developer on the incremental taxable value of the Improvements (excluding the assessed value of the land) in the applicable fiscal year, in excess of the base taxable valuation for the entire building on the Property (excluding the assessed value of the land) of \$903,750.00 U.S. Dollars for the Commercial Portion of the Property, as defined in Exhibit “D” hereto, and \$0.00 U.S. Dollars for the remainder of the Property exclusive of the Commercial Portion, existing on January 1, 2018.⁷ *Any debt-protected tax levy and taxes generated by a self-supported municipal improvement district shall be disregarded in the calculation of the Project TIF. The proceeds of the Downtown Des Moines Self-Supported Municipal Improvement District tax levies are committed to funding the undertakings of such district and are not available for inclusion in the calculation of the Project TIF.*

6. Section 4.3, “Conditions Precedent”, is hereby amended to delete subsection 4.3(3) thereto in its entirety and replace with the following subsection 4.3(3), and to add a subsection 4.3(9) thereto, as follows:

....
3. Developer is not in breach of any of the Urban Renewal Covenants, of the Minimum Assessment Agreement, or of any other provisions of this Agreement, and any default has been cured within the period allowed by Section 5.1 and/or 5.2.

....
9. Developer has executed, and provided to the City for recording at Developer’s cost, a Minimum Assessment Agreement for the Commercial Portion of the Improvements in the form attached hereto as Exhibit "D", establishing the Minimum Assessed Value for said portion of the Property as follows:
• Three Million and no/100 U.S. Dollars (\$3,000,000.⁰⁰), for the Commercial Portion of the Property as defined in Exhibit “D”.

7. Section 6.6, “Recordation”, is hereby deleted in its entirety and replaced with the following:

Sec. 6.6. Recordation. City shall cause this Agreement (exclusive of Exhibit “B”) and Exhibits “C” and “D” hereto to be promptly recorded at the Developer’s expense with the Polk County Recorder. A copy of this Agreement, including all the Exhibits, shall be maintained and available for public inspection in the office of the City Clerk of City.

8. Exhibit “D”, “Minimum Assessment Agreement”, in form attached hereto, is hereby incorporated into and added by reference to the Agreement.

9. All other terms, provisions, and conditions originally set forth in the Agreement, including all exhibits thereto, remain effective and binding upon City and the Developer.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to the Urban Renewal Development Agreement as of the 12th day of July, 2021.

DES MOINES GRIFFIN BUILDING, LLC
an Iowa Limited Liability Company

By: [Signature]
Tim Rypma, Authorized Signatory

STATE OF IOWA)
) ss:

COUNTY OF POLK)

This instrument was acknowledged before me on JAN 12, 2021, by Tim Rypma as Authorized Signatory of **Des Moines Griffin Building, LLC**, on behalf of whom the instrument was executed.



[Signature]
Notary Public in and for the State of Iowa
My Commission Expires: 1-27-23

CITY OF DES MOINES, IOWA

ATTEST:

By: *P. Kay Cmelik*
P. Kay Cmelik, City Clerk

By: *T.M. Franklin Cownie*
T.M. Franklin Cownie, Mayor

APPROVED AS TO FORM:

/s/ Glenna K. Frank
Glenna K. Frank
Assistant City Attorney

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this 21st day of Dec, 2020, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared T.M. FRANKLIN COWNIE and P. KAY CMELIK, to me personally known, and who, being by me duly sworn did state that they are the Mayor and City Clerk, respectively, of City of Des Moines, Iowa, a municipal corporation; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; that the instrument was signed on behalf of City of Des Moines, Iowa, by authority of its City Council, as contained in the Resolution adopted by City Council under Roll Call No. 20- 2120 of City Council on the 21st day of Dec, 2020, and that T.M. FRANKLIN COWNIE and P. KAY CMELIK acknowledged the execution of the instrument to be the voluntary act and deed of City of Des Moines, Iowa, by it and by them voluntarily executed.

Sandi Deery
Notary Public in the State of Iowa



Exhibit "D"
to Urban Renewal Development Agreement

Prepared by: Glenna K. Frank, Assistant City Attorney, City Hall - Legal Department, 400 Robert D.
Ray Drive, Des Moines, IA 50309
Phone: 515-283-4130
Return to: Same
Grantor: Des Moines Griffin Building, LLC
Grantee: City of Des Moines, Iowa (beneficial interest in covenants)
Legal: The Property located at 319 7th Street, Des Moines, Iowa and legally described on Exhibit
"A" hereto. (Herein "Property")

MINIMUM ASSESSMENT AGREEMENT

This Minimum Assessment Agreement, dated as of this 12th day of January, 2021, is made and entered into by and among the **CITY OF DES MOINES, IOWA** (the "City"), **DES MOINES GRIFFIN BUILDING, LLC** (the "Developer"), and the **COUNTY ASSESSOR FOR POLK COUNTY, IOWA** (the "Assessor").

WITNESSETH:

WHEREAS, on September 10, 2018, by Roll Call No. 18-1544, City and Developer entered into an Urban Renewal Development Agreement whereby Developer has undertaken the redevelopment of real property located at 319 7th Street in Des Moines, Iowa, including the Property described above, as follows:

- Historical restoration of the existing approximately 50,406 square foot building on the Property in accordance with State Historic Preservation Office review and requirements;
- Exterior work including repairs to the historic brick masonry facades, replacement of non-historic windows, and restoration of historic finishes and features;
- Installation of landscaping improvements and streetscape elements;
- Undergrounding of utilities located within the Property;
- Repurposing of the interior of the building to contain the following: approximately 13,500 square feet of commercial space, including the ground floor to be used for restaurant or similar commercial uses and office common area space and additional office space on the second floor, which commercial space collectively is contained within a separate tax parcel by Horizontal Property Regime created under Section 499B of the Iowa Code (defined herein as "Commercial Portion"); and approximately 35 apartments on the upper four floors, of which at least 10% shall be committed to affordable housing by keeping rent structures for a minimum of 5% of the units at rates equal to the 50% rent limit and a minimum of 5% of

the units at rates equal to the 65% rent limit as published by the U.S. Department of Housing and Urban Development under its HOME Program Rents for Des Moines-West Des Moines, IA MSA, which limits correspond to individuals who earn 60% and 80% of the area median income (AMI) respectively; and

- A mural or similar historical recognition artwork honoring Edna Griffin or the civil rights legacy on the Property subject to approval by the State Historical Preservation Office and the National Parks Service; and

WHEREAS, pursuant to Section 403.6(19) of the Code of Iowa, a copy of which is attached hereto as Exhibit "1", City and Developer desire to establish a minimum actual value solely for the Commercial Portion of the Property, after substantial completion of the improvements to be constructed or placed thereon by Developer pursuant to the Urban Renewal Development Agreement, which shall be effective upon substantial completion of the improvements and from then until this Agreement is terminated pursuant to the terms herein and which is intended to reflect the minimum actual value of each parcel after completion of the improvements; and

WHEREAS, pursuant to Section 2.4 of the Urban Renewal Development Agreement, the City has issued a Certificate of Completion in recordable form acknowledging the completion of the improvements to the Property in substantial compliance with said Agreement; and

WHEREAS, City and the Assessor have reviewed the plans and specifications for the improvements to the Property completed by Developer.

NOW, THEREFORE, the parties to this Minimum Assessment Agreement, in consideration of the promises, covenants and agreements made by each other, do hereby agree as follows:

1. Commencing upon the date of recording of this Agreement with the office of the Polk County Recorder, and continuing for twenty (20) years following the date of issuance of the Certificate of Completion for the improvements to the Property in accordance with Section 2.4 of the Urban Renewal Development Agreement, the minimum actual taxable value for assessment purposes of Commercial Portion of the Property (cumulative of land and the Commercial Portion of the building), which shall be collectively referred to herein as the "Minimum Actual Value", shall be as follows:
 - Three Million and no/100 U.S. Dollars (\$3,000,000.⁰⁰) for the Commercial Portion, and
2. Developer agrees that for the term of this Minimum Assessment Agreement:
 - (A) it will not seek administrative or judicial review of the applicability or constitutionality of any real property tax statute determined by any duly authorized public official to be applicable to the Commercial Portion of the Property or Developer, or raise the inapplicability or unconstitutionality of any such real property tax statute as a defense in any proceedings, including delinquent tax proceedings;
 - (B) it will not cause a reduction in the taxable value of the Commercial Portion of the Property below the Minimum Actual Value through:
 - (i) willful destruction of the improvements to the parcel or any part thereof;

- (ii) a request to the assessor to reduce the taxable value of the parcel below the Minimum Actual Value;
 - (iii) an appeal to the Board of Review to reduce the taxable value of the parcel below the Minimum Actual Value;
 - (iv) a petition to the Board of Review or the director of review of the State of Iowa to reduce the taxable value of the parcel below the Minimum Actual Value;
 - (v) an action in a District Court of the State of Iowa seeking to reduce the taxable value of the parcel below the Minimum Actual Value;
 - (vi) an application to the State of Iowa, Polk County, or City, or to any other public officer or body requesting an abatement of real property taxes upon the parcel pursuant to any present or future statute or ordinance;
 - (vii) an application to the assessor to have all or any part of the parcel declared to be tax exempt; or
 - (viii) any other proceeding, whether administrative, legal or equitable, with any administrative body within City, Polk County, or the State of Iowa or with any court of the State of Iowa or the federal government.
3. Prior to any voluntary sale or conveyance of any portion of the Property containing the Commercial Portion thereof, Developer shall provide to the City and County Assessor a schedule which allocates the Minimum Actual Value of the affected parcel among the new tax parcels to be created within the Property in a manner determined to be reasonable by the Polk County Assessor. The portion of the Minimum Actual Value of the original Property allocated to each new tax parcel created therein shall constitute the Minimum Actual Value for that new parcel. Developer shall not cause or voluntarily permit any tax parcel to be created that contains any portion of the Property in combination with any additional real estate outside the Property.
 4. Nothing herein shall be deemed to waive Developer's rights under Iowa Code Section 403.6(19), as amended, to contest that portion of any actual value assignment made by the Assessor in excess of the Minimum Actual Value established herein. In no event, however, shall Developer seek to reduce the actual value assigned to the Commercial Portion of the Property below the Minimum Actual Value established herein during the term of this Agreement.
 5. In the event that any portion of the Property containing the Commercial Portion thereof is taken through the exercise of the power of eminent domain, the Minimum Actual Value of such parcel shall be reduced by the same proportion as the value of the portion so taken bears to the value of the parcel in its entirety immediately prior to such taking.
 6. This Minimum Assessment Agreement shall be promptly recorded by City with the Recorder of Polk County, Iowa.
 7. Neither the preambles nor provisions of this Minimum Assessment Agreement are intended to, or shall be construed as, modifying the terms of the Urban Renewal Development Agreement between City and Developer.
 8. This Minimum Assessment Agreement shall inure to the benefit of and be binding upon the

successors and assigns of the parties.

9. This Minimum Assessment Agreement may be terminated at any time by the recording of a Termination Certificate executed by the City which specifically releases the Developer from any further obligation under this Minimum Assessment Agreement. Such termination shall be effective upon the delivery of a copy of the recorded Termination Certificate to the County Assessor.

"Developer"

**DES MOINES GRIFFIN BUILDING,
LLC
An Iowa Limited Liability Company**

By: Tim Rypma
Its: VP

STATE OF IOWA)
) ss:
COUNTY OF POLK)

This instrument was acknowledged before me on Jan 12, 2020, by Tim Rypma, as VP of Des Moines Griffin Building, LLC, on behalf of whom the instrument was executed. RB

[Signature]
Notary Public in the State of Iowa
My commission expires: 1-27-23



"City"

CITY OF DES MOINES, IOWA

ATTEST:

By: *P. Kay Cmelik*
P. Kay Cmelik, City Clerk

By: *T.M. Franklin Cownie*
T.M. Franklin Cownie, Mayor

APPROVED AS TO FORM:

/s/ Glenna K. Frank
Glenna K. Frank, Assistant City Attorney

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this 21st day of Dec, 20 20, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared T.M. FRANKLIN COWNIE and P. KAY CMELIK, to me personally known, and who, being by me duly sworn did state that they are the Mayor and City Clerk, respectively, of City of Des Moines, Iowa, a municipal corporation; that the seal affixed to the foregoing instrument is the corporate seal of the corporation; that the instrument was signed on behalf of City of Des Moines, Iowa, by authority of its City Council, as contained in the Resolution adopted by City Council under Roll Call No. 20- 2130 of City Council on the 21st day of Dec, 2020, and that T.M. FRANKLIN COWNIE and P. KAY CMELIK, acknowledged the execution of the instrument to be the voluntary act and deed of City of Des Moines, Iowa, by it and by them voluntarily executed.

Sandi L. Deery
Notary Public in the State of Iowa
My commission expires: 3/5/22



CERTIFICATION OF ASSESSOR

The undersigned, having reviewed the plans and specifications for the improvements constructed upon the Property described above, and the market value assigned to the Commercial Portion of such improvements, and being of the opinion that the minimum market values contained in the foregoing Minimum Assessment Agreement appear reasonable, hereby certifies as follows:

The undersigned Assessor, being legally responsible for the assessment of the Property described above, upon completion of the improvements to be made to such parcels, certifies that the minimum actual value assigned to the Commercial Portion of the Property (cumulative of land and the Commercial Portion of the building), until termination of the Minimum Assessment Agreement pursuant to the terms thereof, shall be:

- Three Million and no/100 U.S. Dollars (\$3,000,000.⁰⁰) for the Commercial Portion.

Date: _____, 20_____.

Assessor for Polk County, Iowa

STATE OF IOWA)
) ss:
COUNTY OF POLK)

Subscribed and sworn to before me by _____, Assessor for Polk County, Iowa, on this _____ day of _____, 20_____.

Notary Public for the State of Iowa
My commission expires: _____

Attachments:
Exhibit "A" – Legal Description of the Property
Exhibit "1" –Excerpts from Iowa Code §403.6 (2019)

EXHIBIT A – LEGAL DESCRIPTION

Property:

The West Half of Lots 1 and 2 in Block 12 in the Town of Fort Des Moines, now included in and forming a part of the City of Des Moines, Polk County, Iowa.

Commercial Portion of the Property:

The Commercial Unit in GRIFFIN BUILDING CONDOMINIUMS, a Condominium established upon the real property legally described as follows: The West Half of Lots 1 and 2 in Block 12 in the Town of Fort Des Moines, now included in and forming a part of the City of Des Moines, Polk County, Iowa, together with the undivided percentage interest in the common and limited elements appurtenant to such units as set forth in the Declaration of Submission of Property to Horizontal Property Regime recorded in Book 17641, Page 572 and of the Office of the Recorder of Polk County, Iowa, and all other interest, rights and responsibilities appurtenant to such units pursuant to said Declaration of Submission, as it may be amended and/or supplemented.

Exhibit "1"

Excerpts from Iowa Code §403.6 (2019)

403.6 Powers of municipality.

The provisions of this chapter shall be liberally interpreted to achieve the purposes of this chapter. Every municipality shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this chapter, including the following powers in addition to others herein granted:

.....

19. *a.* A municipality, upon entering into a development or redevelopment agreement pursuant to section 403.8, subsection 1, or as otherwise permitted in this chapter, may enter into a written assessment agreement with the developer of taxable property in the urban renewal area which establishes a minimum actual value of the land and completed improvements to be made on the land until a specified termination date which shall not be later than the date after which the tax increment will no longer be remitted to the municipality pursuant to section 403.19, subsection 2. The assessment agreement shall be presented to the appropriate assessor. The assessor shall review the plans and specifications for the improvements to be made and if the minimum actual value contained in the assessment agreement appears to be reasonable, the assessor shall execute the following certification upon the agreement:

The undersigned assessor, being legally responsible for the assessment of the above described property upon completion of the improvements to be made on it, certifies that the actual value assigned to that land and improvements upon completion shall not be less than \$.....

b. This assessment agreement with the certification of the assessor and a copy of this subsection shall be filed in the office of the county recorder of the county where the property is located. Upon completion of the improvements, the assessor shall value the property as required by law, except that the actual value shall not be less than the minimum actual value contained in the assessment agreement. This subsection does not prohibit the assessor from assigning a higher actual value to the property or prohibit the owner from seeking administrative or legal remedies to reduce the actual value assigned except that the actual value shall not be reduced below the minimum actual value contained in the assessment agreement. An assessor, county auditor, board of review, director of revenue, or court of this state shall not reduce or order the reduction of the actual value below the minimum actual value in the agreement during the term of the agreement regardless of the actual value which may result from the incomplete construction of improvements, destruction or diminution by any cause, insured or uninsured, except in the case of acquisition or reacquisition of the property by a public entity. Recording of an assessment agreement complying with this subsection constitutes notice of the assessment agreement to a subsequent purchaser or encumbrancer of the land or any part of it, whether voluntary or involuntary, and is binding upon a subsequent purchaser or encumbrancer.

Mortgagee's Consent to Minimum Assessment Agreement

The undersigned holds an interest in the following Property pursuant to that certain Mortgage filed in the office of the Recorder of Polk County, Iowa, on _____, in Book _____, at Page _____.

The real estate at 319 7th Street, in the City of Des Moines, Polk County, Iowa, more specifically described as follows:

The West Half of Lots 1 and 2 in Block 12 in the Town of Fort Des Moines, now included in and forming a part of the City of Des Moines, Polk County, Iowa.

The undersigned hereby consents to the foregoing Minimum Assessment Agreement and agrees that such Minimum Assessment Agreement shall remain in full force and effect notwithstanding any foreclosure of its mortgage.

Mortgagee

By: _____

Signature

Print name and title

State of Iowa)
) ss:
County of _____)

This instrument was acknowledged before me on _____, 20__, by _____
_____ as _____ of _____
_____ on behalf of whom the instrument was executed.

Notary Public in the State of Iowa

My commission expires: _____